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18 In re
19 JASMINE NETWORKS, INC.
Debtor.

Case No. 02-54815-MM
(Chapter 11)

JASMINE NETWORKS, INC., Debtor in Possession.

Adversary Proceeding No.

22 Plaintiff

COMPLAINT FOR INJUNCTIVE RELIEF

23 v.

24 MARVELL SEMICONDUCTOR, INC., a
25 California corporation,

26 Defendant

1 Comes now Plaintiff Jasmine Networks, Inc., Debtor in Possession
2 (“Jasmine”), and alleges as follows:

JURISDICTION

4 1. In this adversary proceeding, Jasmine seeks injunctive relief to
5 enforce the rule of *Barton v. Barbour*, 104 U.S. 126 (1881) (the “Barton
6 Doctrine”), the automatic stay of Bankruptcy Code section 362(a), and this
7 Court’s exclusive jurisdiction over the administration of the chapter 11 estate.
8 Jasmine also seeks injunctive relief to prevent any challenge in state court to the
9 disclosure of certain publicly available information to creditors and potential
10 investors, in accordance with Bankruptcy Code sections 363 and 1125. Finally,
11 Jasmine seeks appropriate damages and sanctions on account of the violation of
12 the Barton Doctrine and the automatic stay.

13 2. This Court has jurisdiction over the subject matter of this complaint
14 under 28 U.S.C. §1334. This is a core proceeding under 28 U.S.C. §157(b)(2)(A)
15 and (O).

VENUE

17 3. Venue is proper in this court under 28 U.S.C. §1409.

PARTIES

19 4. Jasmine is a Delaware corporation authorized to do business in the
20 State of California. Jasmine's former principal place of business was located in
21 San Jose, California.

22 5. Jasmine filed a voluntary petition for relief under Chapter 11 of the
23 Bankruptcy Code on August 28, 2002, and is a debtor and debtor-in-possession
24 under the Bankruptcy Code.

25 6. Defendant Marvell Semiconductor, Inc. (“Marvell”) is a California
26 corporation authorized to and doing business in the State of California. Marvell

1 filed an unsecured claim in this action, subjecting itself to the jurisdiction of this
2 Court.

3 GENERAL ALLEGATIONS

4 7. On September 12, 2001, (prior to its bankruptcy filing) Jasmine filed
5 an action against Marvell in the Santa Clara County Superior Court, as Case No.
6 CV 801411, for unfair competition, misappropriation of trade secrets, and
7 violations of California Business & Professions Code §17200 (the “Marvell
8 Litigation.”) The Marvell Litigation is the single largest asset of the Jasmine
9 estate, and presents the only possibility that the unsecured creditors will obtain any
10 significant distribution on their claims.

11 8. Jasmine’s complaint is based on Marvell’s use and misappropriation
12 of Jasmine’s technology during the course of negotiations between Jasmine and
13 Marvell. Jasmine and Marvell had entered into a tentative agreement for the sale
14 of certain intellectual property from Jasmine to Marvell, and were engaged in due
15 diligence regarding the proposed deal. Not satisfied with simply purchasing
16 Jasmine’s technology in the normal course, Marvell conspired to acquire the
17 intellectual property relating to semiconductor designs (application specific
18 integrated circuits or “ASICs”) along with a group of Jasmine engineers, all in
19 violation of the non-disclosure agreement entered into by the parties.

20 Unfortunately for Marvell, Jasmine discovered the conspiracy, partially through a
21 piece of evidence that Marvell claims is protected by the attorney-client
22 communication privilege (the “Disputed Evidence”).

23 9. Upon discovery of Marvell’s actions, Jasmine filed the Marvell
24 Litigation in the Superior Court seeking compensation for the contractual and
25 tortious misdeeds of Marvell and the Marvell Defendants. Jasmine incorporated
26 into its complaint portions of the Disputed Evidence.

1 10. In response to Jasmine's complaint, Marvell sought and ultimately
2 obtained a preliminary injunction issued by the Superior Court on January 7, 2002,
3 which prohibited the Debtor from disclosing or using the Disputed Evidence
4 which Marvell claimed to be confidential, in support of Jasmine's complaint (the
5 "Preliminary Injunction"). The Preliminary Injunction, a true and correct copy of
6 which is attached hereto as Exhibit 1, precludes use of "Privileged
7 Communications" but offers no definition of what a "Privileged Communication"
8 consists of.

9 11. On or about November 13, 2002, the Bankruptcy Court issued its
10 "Order Granting Relief from the Automatic Stay" to allow the Marvell Litigation
11 to proceed (the "Relief from Stay Order"). The Relief from Stay Order does not
12 authorize anyone to seek quasi-criminal contempt sanctions against the Debtor or
13 its counsel. Nor does the Relief from Stay Order purport to waive the Barton
14 Doctrine, or otherwise permit Marvell to pursue claims in violation of it. In fact,
15 the Relief from Stay Order specifically states that "[n]o party shall collect any
16 money judgment, monetary sanctions or other form of pecuniary damages from
17 Jasmine without further order of the Bankruptcy Court."

18 12. Jasmine appealed the Preliminary Injunction to the Sixth Appellate
19 District, in the Courts of Appeal of the State California as Case No. HO23991.
20 The Courts of Appeal heard oral argument on April 6, 2004, during which
21 argument Justice Conrad Rushing read a substantial portion of the voicemail from
22 the bench.

23 13. Just two days later on April 8, 2004, the Courts of Appeal issued its
24 published, unanimous decision fully reversing the Superior Court's order granting
25 the Preliminary Injunction. The opinion, authored by Justice Conrad Rushing, was
26 certified for publication in the official reporter and assigned the citation of 117

1 Cal.App.4th 794 (the “Opinion”). The Opinion concluded that Marvell had waived
2 any privilege claims for the contents of the Disputed Evidence; that the Superior
3 Court should consider the contents of the Disputed Evidence under California law;
4 and that sufficient evidence was present to allow application of the crime-fraud
5 exception to the attorney-client privilege.

6 14. The Opinion sets forth verbatim much of the Disputed Evidence.
7 The Opinion has been widely disseminated on the internet, and has been the
8 source of much commentary from legal and corporate circles, since it governs the
9 impact of the crime fraud exception and potential waiver of privilege upon
10 communications between in house counsel and executives. The Opinion was
11 widely reported by national media outlets, including CNN, CBS Marketwatch, and
12 Forbes. The Opinion also received significant discussion in numerous legal
13 publications and websites. Although the decision is not precedential, it is still
14 (more two years after it was decided) available through the California Courts of
15 Appeal’s website, at the California Supreme Court, on LEXIS and Westlaw, and at
16 the end of any reasonably well-tailored Google search.

17 15. Even Marvell’s own website prominently features excerpts of the
18 Disputed Evidence. Marvell has posted a recent article from Forbes published on
19 August 14, 2006, which describes the Disputed Evidence. The article may be
20 found by clicking on the first listed “Highlight” at the Marvell.com homepage.
21 The article contains the following statement with respect to the Marvell Litigation
22 and a quote from the Disputed Evidence:

23 Marvell has a certain win-at-all-costs reputation. In 2001 it was
24 negotiating to buy the patents of a company called Jasmine
25 Networks. Some Marvell executives forgot to hang up the phone
26 after leaving a voice mail with Jasmine and were overheard
seemingly plotting to steal the technology. Marvell’s patent attorney
Eric Janofsky wondered aloud if Sehat [Sutardja, Marvell’s Founder]

1 would go to jail and moments later remarked: “If we took the
2 [intellectual property] on the pretense of just evaluating it. ...”
3 Jasmine, now bankrupt, sued Marvell, which denies it was acting
4 underhandedly. The case is in court.

5 Simply put, the bulk of the content of the Disputed Evidence - and certainly
6 sufficient content to render no part of that communication “confidential” or
7 “privileged” - is available on the internet to anyone who cares to look. From
8 reporters to bar associations to attorneys, the Opinion and an extensive portion of
9 the Disputed Evidence has been reviewed, repeated, excerpted and crowded over,
9 even on Marvell’s own website.

10 16. On May 18, 2004, Marvell filed a Petition for Review with the
11 California Supreme Court seeking the Court’s reconsideration of the Court of
12 Appeal’s decision. On July 21, 2004, the Supreme Court granted review, but
13 deferred all briefing in the Marvell Litigation until the Supreme Court has issued a
14 decision in another case, *Rico vs. Mitsubishi*, Supreme Court No. S123808. The
15 *Rico vs. Mitsubishi* case has been fully briefed since May 2005, but no oral
16 argument has yet been scheduled.

17 17. In the meantime, Marvell sought to derail the Marvell Litigation by
18 turning to the Bankruptcy Court and seeking appointment of an examiner to
19 purportedly determine the value of the intellectual property owned by Jasmine and
20 which Marvell was supposed to purchase. In conjunction with its opposition to the
21 motion to appoint an examiner and in reliance on the Opinion dissolving the
22 Preliminary Injunction, Jasmine filed with the Bankruptcy Court a copy of the
23 Disputed Evidence and the Opinion. The purpose of providing these documents to
24 the Bankruptcy Court was to show that Jasmine’s technology was truly valuable,
25 as was the Marvell Litigation. On the latter point, the status of admission of key
26 evidence is obviously relevant.

1 18. Marvell has claimed that the filing of the Disputed Evidence was in
2 contempt of the Preliminary Injunction. However, Marvell did not seek redress in
3 this Court. The Superior Court, upon application by Marvell, issued an Order to
4 Show Cause re Contempt on November 18, 2005, commanding that the Debtor
5 and its counsel, Michael Malter (who was neither counsel in the Marvell
6 Litigation, nor a party thereto), show cause why they should not be held in
7 contempt (the “Contempt Action”). The only purported acts of contempt
8 addressed by the Contempt Action are the brief and supporting declarations in
9 opposition to the examiner motion that were filed in this Court by the Debtor
10 through its counsel, Michael Malter.

11 19. Marvell did not seek further relief from the automatic stay, or any
12 other permission of this Court before initiating the Contempt Action in the
13 Superior Court against the Debtor and its counsel, Mr. Malter, notwithstanding the
14 fact that the Contempt Action seeks to recover monetary relief against the Debtor
15 and Mr. Malter for actions taken before this Court in the proper administration of
16 this bankruptcy case. Moreover, it is clear that the Court did not, in 2002, lift the
17 automatic stay so that Marvell could pursue claims against the Debtor and its
18 counsel for a pleading they filed in this Court in 2005.

19 20. At the initial trial date on the Contempt Action, Jasmine and Mr.
20 Malter moved for judgment on the pleadings, claiming that there was no violation
21 of the Preliminary Injunction as a matter of law in light of the Opinion, or,
22 alternatively, since the status of the Preliminary Injunction was unknown there
23 could be no willful violation of that order sufficient to justify contempt. This
24 motion was denied by the Superior Court, and Jasmine’s subsequent writ petitions
25 to the Court of Appeal and the Supreme Court were denied. Trial is now set for
26 December 18, 2006 in the Contempt Action.

1 21. The Debtor has received an offer to fund a Plan of Reorganization.
2 The proposed funding source is willing pay sufficient funds to make a partial cash
3 distribution to creditors, who will also receive shares in the reorganized Debtor on
4 a pro-rata basis. The party providing the funding will receive the controlling
5 interest in the reorganized debtor, and has promised to aggressively pursue the
6 Marvell Litigation.

7 22. Jasmine filed a motion to approve procedures for potential
8 overbidding of the offer to fund the Plan. This Court directed at its July 14, 2006
9 hearing on that motion that, if the Debtor wants to proceed with its investor-based
10 plan, the Debtor must competitively market the opportunity to invest in the
11 Marvell Litigation to other potential investors, so that a competitive bidding
12 process may take place, the estate may receive the greatest possible value, and the
13 requirements of Bankruptcy Code section 363 are fulfilled. This Court also
14 directed at its July 14 hearing that, before a disclosure statement could be
15 approved, creditors had to be provided with additional information about the
16 Marvell Litigation so that they could better assess the value of that litigation and
17 the potential recoveries they might receive as a result of the litigation.

18 23. Marvell, however, has claimed that even mentioning the fact that a
19 Google search can lead to copies of the Opinion is a violation of the Preliminary
20 Injunction. Thus, the Debtor is in the position of not being able to market this
21 asset of the Debtor as required in this action for fear that a contempt citation will
22 issue in the Superior Court. The Debtor simply cannot tell what information it can
23 provide to potential bidders, and whether or not supplying that information will
24 subject the Debtor and/or counsel to liability. The Debtor also is restrained from
25 sharing relevant information regarding the value of this estate asset with its
26 creditors.

1 24. The proposed Plan and its funding source cannot be approved by this
2 Court without an opportunity being given for other parties to overbid. If
3 appropriate procedures cannot be established for this overbid process, including
4 setting the parameters of what information may be disclosed to potential bidders,
5 the Plan process cannot go forward a potential funding source will be lost. In that
6 event, creditors will receive no distribution until the Marvell Litigation is
7 successfully completed, a potential event which may not occur for years.

8 25. The Preliminary Injunction is preventing the Debtor from attracting
9 potential bidders for its assets, thereby interfering with the administration of this
10 case and potential recovery for the unsecured creditors. Without immediate
11 intervention by the Court, the Debtor cannot market the asset sufficient to meet its
12 obligation to show this Court (and the creditors) that it has made a reasonable
13 effort to market the estate's chief asset, the Marvell Litigation. Nor can the Debtor
14 provide full disclosure to its creditors. The Debtor is thus prevented from going
15 forward with a plan or reorganization that will provide an immediate cash payment
16 to the creditors, as well as the potential share in any eventual recovery on the
17 Marvell Litigation.

18 26. As a direct, proximate result of Marvell's actions as alleged herein,
19 the Debtor has suffered monetary damages including but not limited to attorneys'
20 fees and costs.

21 27. By negatively impacting the Debtor in its efforts to maximize the
22 value of the Marvell Litigation and communicate with its creditors regarding the
23 value of estate assets, the Preliminary Injunction is intruding upon the jurisdiction
24 of this Court. In the absence of an injunction restraining Marvell from (a)
25 prosecuting the Contempt Action and (b) making any future contempt applications
26 in the Superior Court claiming that the Debtor's actions in this Court violate the

1 Preliminary Injunction, the Debtor is unable to meet its obligations to the creditors
2 and this Court. Moreover, the Preliminary Injunction and the Contempt Action
3 present an improper intrusion into the jurisdiction of this Court and its power to
4 administer Jasmine's estate.

PRAYER

6 WHEREFORE, Jasmine prays judgment as follows:

